ABDUL JALIL ABDUL SATAR

v.

PUBLIC PROSECUTOR

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HARUN HASHIM SCJ
GUNN CHIT TUAN SCJ
[SC CRIMINAL APPEAL NO. 49 OF 1987]
14 MARCH 1991

EVIDENCE: *Dangerous drugs - Custody of exhibits - Necessary link in chain of evidence - Prior to production before Court - Failure to call a particular witness - Doubt as to identity of an object - Failure of prosecution to trace witnesses.*

The appellant was convicted and sentenced to death on a charge of trafficking in cannabis contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act). It was contended by the appellant that the learned trial Judge had erred in law and fact when he failed to hold that the custody of the exhibits with the police left a gap in the chain of evidence relating to the exhibits before their production in Court and that the failure of the prosecution to call T, who delivered the exhibits to the chemist PW7 and who then collected them back from him, constituted a serious break in the chain of evidence. The main contention rested on the fact that the exhibits were in T's possession for a period of 24 hours without any explanation as to where and in whose custody they were kept during the said period.

Held:

[1] Where there is a doubt as to the identity of an object, a failure to adduce evidence to provide the necessary link in the chain of evidence is fatal to the prosecution case.

[2] In this case, the evidence of T was necessary to prove that the exhibits which were received by PW6 were the very ones which the chemist had sent back to him the day earlier and T would have been able to provide the missing link in the chain of evidence if more strenuous efforts had been made to trace him; the prosecution has not given valid reasons as to why T could not be traced or what efforts have been made to trace him.

[3] The failure to call T has caused a serious break in the chain of evidence relating to the identity of the drugs produced in Court.

[Appeal allowed.]

Cases referred to:
Su Ah Ping v. PP [1980] 1 MLJ 75
Teoh Hoe Chye v. PP [1987] CLJ (Rep) 386

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 39B(1)(a), (2)

For the appellant - Harpal Singh Grewal (S. Thayaparan with him); M/s. A.J. Ariffin Chong & Harpal
For the respondent - Mohd. Yusof bin Hj. Zainal Abidin, DPP

JUDGMENT

Gunn Chit Tuan SCJ:

In this appeal, Abdul Jalil bin Abdul Satar (the appellant) has appealed against the decision of the High Court at Kuala Lumpur on 11 August 1987 when he was convicted and sentenced to death on an amended charge which reads as follows:

> That you on 16 June 1983 at about 3 p.m. at Lot No. 389A, Batu 9½, Jalan Cheras, Kajang, in the district of Ulu Langat in the state of Selangor, did on your own behalf, traffic in dangerous drugs to wit cannabis weighing 429.59 grammes and you have thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s. 39B(2) of the same Act.

The case for the prosecution revealed that acting on information received on 16 June 1983, Insp. Mokhtar bin Hj. Mohamad (PW1) led a party of police personnel to 9½ milestone, Jalan Cheras, Kajang. Arriving at a house on Lot No. 389A, the Inspector found the front door open and through this door he saw a male person, whom he identified as the appellant, coming out of the kitchen area. PW1 and his men then entered the house and identified themselves to the appellant who then accompanied PW1 to the area behind the kitchen of the said house. This area appeared to have been used as a store and also contained a toilet and bathroom. It has an access door to the back of the house. On entering the area in question not far from the access door, PW1 saw a piece of newspaper (P8) spread on the floor and on it was a pile of dried leaves (P9). There was also one plastic bag (P10) containing paper rolls (P11) and another smaller plastic bag (P12) containing 348 brown paper cuttings similar to the paper in the plastic bag containing the paper rolls. PW1 then directed his men to handcuff the appellant and he then examined one of the rolls in the plastic bag (P10) and found that it contained dried leaves similar to those on the newspaper spread on the floor. PW1 suspected the dried leaves to be cannabis and he and his men then counted the rolls and found them to number 750 containing the same substance. He then issued a search list (P7) and took all the exhibits together with the appellant and his wife, one Norgayah bte Hj. Mohd. Yusoff and one Azam Khan bin Abdul Satar, who was arrested outside the house, to Jalan Bandar Police Station where he made a police report. Later all the arrested persons and the exhibits were taken to the Kajang Police Station where they were handed over to ASP Latifi bin Dato Ahmad (PW6), the investigating officer.

PW6 confirmed receiving the said exhibits on 16 June 1983 at about 6.00 p.m. from PW1. He also confirmed receiving into custody the accused, Norgayah bte Hj. Mohd. Yusoff and Azam Khan bin Abdul Satar. Later on, PW6 released Norgayah, the appellant's wife, and Azam Khan, the appellant's younger brother. The exhibits were packed by PW6 and sealed in packages marked A, B and C and were then sent *via* L/Cpl. 26093 Teh Kok Liang to the chemist, Mr. Wong Hong Hoon (PW7) who testified and confirmed that the dried leaves sent to him were cannabis as defined in s. 2 of the Dangerous Drugs Act 1952, totalling 429.59 grammes.

At the close of the prosecution's case and after submissions by both Counsel, the defence was called and the appellant elected to make an unsworn statement from the dock. The appellant's sister-in-law, one Noriza bte Hj. Mohd. Yusoff (DW2) and the appellant's wife, Norgayah bte Hj. Mohd. Yusoff (DW3) also testified on oath for the defence. After considering the defence, the learned Judge found that the defence had not rebutted the prosecution's case nor raised any reasonable doubt. He therefore found the appellant guilty as charged and, in accordance with the law, sentenced him to be hanged.

Several grounds were raised in the appeal but we considered that the only one which merited our consideration was the contention that the learned trial Judge had erred in law and in fact when he failed to hold that the custody of the exhibits with the police left a gap in the chain of evidence relating to the exhibits before their production in Court. It was argued that the learned Judge ought to have held that the failure of the prosecution to call L/Cpl. 26093 Teh Kok Liang, who delivered the exhibits to the chemist PW7 and collected them back from him, was a serious break in the chain of evidence. Learned Counsel for the defence referred us to p. 16 of the appeal records where PW6 stated that he had sent the exhibits to the chemist *via* L/Cpl. Teh Kok Liang, but there is a note after that by the learned Judge that the Deputy Public Prosecutor then stated that the witness had retired and could not be traced after all efforts made. PW6 had also stated in evidence that on 8 September 1983 at 9.40 a.m., he received back the exhibits *via* the said Teh Kok Liang together with the chemist's report. PW6 added that he believed that Teh Kok Liang had received the exhibits a day earlier. Defence Counsel stressed that the learned trial Judge had failed to give any consideration to the fact that the exhibits were in the possession of L/Cpl. Teh Kok Liang for a period of 24 hours without any explanation as to where and in whose custody they were kept during the said period. He contended that the learned Judge ought to have held that the failure of the prosecution to adduce evidence that provided the necessary link in the chain of evidence as regards the exhibits was fatal to the prosecution's case.

We were referred to *Teoh Hoe Chye v. PP* [1987] CLJ (Rep) 386 in which case this Court, in a judgment delivered by Abdul Hamid CJ Malaya (as he then was) had pointed out that fundamentally the issue was not whether there was a failure to call or not to call a witness but whether the failure to call a particular witness gave rise to a serious gap in the prosecution case. Defence Counsel contended that in this case there was a serious break in the chain of evidence affecting proof as to the identity of the exhibits as in *Teoh Hoe Chye's* case when the appellant's appeal was allowed and the conviction set aside.

We decided to call upon the learned deputy to address us only on this issue raised by the appellant but he was unable to enlighten us on what steps had been taken by the police to trace Teh Kok Liang. He was also unable to explain why no efforts had been made to trace Teh Kok Liang through the Pensions Division of the public services department.

This Court has observed in *Teoh Hoe Chye's* case that the law is clear since the Federal Court's case of *Su Ah Ping v. PP* [1980] 1 MLJ 75 that it is unnecessary to call evidence to ensure that there is no break in the chain of evidence. If the officer who picked up the object at the scene produced it and identified it as that very object that is enough and there is no need to call every other officer who handled it, unless there is doubt as to the identity. We would reiterate as we have done so in *Teoh Hoe Chye's* case that where a doubt as to the identity of an object arises, a failure to adduce evidence to provide the necessary link in the chain of evidence is fatal to the prosecution case. In the instant case, there would be no difficulty for PW1 to identify the plastic bags (P10 and P12) and the newspaper (P8) on which he has signed. But in the case of the 750 brown paper rolls (P11) containing a total of 362.83 grammes nett of dried plant material and the paper packet (marked B by PW6) containing 66.76 grammes nett of dried plant material, we have our doubts that PW1 could have really identified the plant materials produced in Court on 3 August 1987 as the dried leaves which were recovered by him from the appellant's premises more than four years ago, that is, on 16 June 1983. In the circumstances, the evidence of L/Cpl. Teh Kok Liang was therefore necessary to prove that the exhibits which were received by PW6 on 8 September

1983 were the very ones which the chemist had sent back to him the day earlier. L/Cpl. Teh Kok Liang would have been able to provide the missing link in the chain of evidence if more strenuous efforts had been made to trace him through the Pensions Division of the public services department, to give evidence for the prosecution. The prosecution has not given valid reasons as to why L/Cpl. Teh Kok Liang could not be traced or what efforts have been made to trace him. In our view, the failure to call that witness in this case has caused a serious break in the chain of evidence relating to the identity of the drugs produced in Court. As the prosecution has failed to comply with the requirements of strict proof in a criminal case, it is our considered view that in the circumstances of this case the appeal of the appellant should be allowed. We therefore set aside his conviction and sentence and ordered that he be acquitted and discharged.

Also found at [1991] 2 CLJ 1089